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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTÍNEZ

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The meeting was called to order at 10.45 a.m.

PROMOTION, PROTECTON AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

(a) PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF WOMEN (agenda item 17) (E/CN.4/Sub.2/1992/36; E/CN.4/Sub.2/1991/42)

1. Mrs. WARZAZI said that item 17 was of particular significance in that the questions it raised called for a response in the light of a number of tragic events that had marked and continued to mark the year 1992 and of situations which figures and statistics made still more cruel.

2. In Eastern Europe, far from improving the lot of the people of the region by bringing them freedom, democracy and prosperity, the collapse of the communist regimes and the opening up to democracy had unleashed nationalism and hatred. The result had been cruel inter-community conflicts with horrifying consequences that were taking place in conjunction with policies of terror and horror in which "ethnic cleansing", carried out in complete impunity, rendered null and void all resolutions and all international instruments aimed at protecting human rights, amid total indifference on the part of great Powers which only recently had unhesitatingly embarked on a war in order, primarily, to safeguard their economic and strategic interests. In Africa, the alarm voiced, inter alia, by the ICRC, UNHCR, various NGOs and the countries concerned, notably in southern Africa, where nearly 34 million people were threatened with famine, had not been heeded by the international community or had been heeded too late. Such was the case of Somalia, where one might well wonder what had become of human rights when one third of the population was condemned to certain death. As to the countries of Latin America, one wondered who would guarantee respect for the rights of their populations who endured daily criminal attacks by terrorist movements, without any protest being voiced. Finally, nothing was being done to eliminate the religious fanaticism which had its roots in poverty, ignorance and frustration and which threatened the rights won with difficulty by men and above all women, after lengthy efforts and in the context of a democracy determined to gain strength. However, in contrast to the treatment meted out to migrant workers, far from being condemned and rejected, those who fomented violence found refuge, residence, employment and security in those very countries that posed as defenders of human rights.

3. The situation was hardly better in the rich countries that prided themselves on their democratic model. In the United States, the violent riots that had taken place in Los Angeles, in April 1992, could be attributed to the policies of marginalization and racial discrimination carried out against the minorities of that country. A commission instructed to examine inequalities in New York courts had even stated that there were two legal systems in existence, one for whites and another, and very different system, for minorities and the poor.

4. All those events, the enumeration of which was unfortunately by no means exhaustive, had led a number of public figures or representatives of international organizations to make statements in which they had stressed the linkage between economic and social problems, human rights violations and impediments to the process of democratization and development and to the consolidation of human rights formed by poverty, underdevelopment, unemployment and illiteracy. The Conference on Security and Cooperation in the Mediterranean, held at Malaga, in June 1992, had solemnly affirmed, inter alia, in its final document that each culture and civilization contained lofty values that constituted the spiritual heritage of mankind as a whole and had declared its belief that those values were linked with concepts such as respect for human life, the need for spirituality, human solidarity, the dignity inherent in human persons and the duty of present generations towards future generations.

5. All persons were entitled to enjoy to the full the fruits of the long and patient labour carried out by the international community on the basis of the principles set forth in the Charter of the United Nations and the Universal Declaration of Human Rights and all Governments, without exception, were duty bound to guarantee their citizens, without any distinction, dignity, freedom, liberty and prosperity. However, it was also obvious that it was only possible to promote human rights in the context of international cooperation based on active solidarity, respect for others, dialogue and a willingness to understand the right to difference. Moreover, human rights would be respected only when the rich countries demonstrated their political will to put an end to the injustice and inequality that stamped international economic relations and to devote more resources to peace and security in the world rather than to war. One should not lose sight of the fact that the first right that should be defended is the right to life, failing which the other rights have no justification.

6. Mr. KHALIFA commented that item 17 (a) focused mainly on prevention of discrimination and protection of children whereas the final report prepared by the Special Rapporteur, Mr. Mazilu, (E/CN.4/Sub.2/1992/36), dealt with human rights and youth, a fact which might create a certain confusion. However, the fault, if there was a fault, lay with the Sub-Commission since Mr. Mazilu had prepared that report at its request. The problems of young people were not a priority issue for the Sub-Commission since certain specific aspects of them were already under consideration by other United Nations bodies and agencies, notably WHO, ILO, UNESCO and FAO. It was therefore difficult for Mr. Mazilu to add anything to all that had already been said or written on the question. Moreover, one should not lose sight of the fact that when he had been entrusted with the report, Mr. Mazilu had been, as members of the Sub-Commission were well aware, in a particularly difficult situation which inevitably had influenced the drafting of the report and largely accounted for its lack of objectivity.

7. In the report, Mr. Mazilu made a number of allusions of a political nature that revealed his personal feelings about the State and society in which he had been living. He condemned any regime which deprived individuals of their freedoms and prevented them from exercising their economic, social and cultural rights, thereby reducing them to unemployment and poverty. He forgot, however, that unemployment and poverty were to be found in all

countries regardless of the ideological system that was espoused and that they inevitably produced a deterioration in the situation of young people. In any event, it was not a good idea to treat young people as though they were totally independent of the rest of society. That was an error that had already been committed in respect of women. Further, the report equated young people and children, on one hand, and young people and the public at large, on the other. That was particularly the case in paragraphs 219 to 263 which contained a charter of the rights and freedoms of youth in which the word youth could easily be replaced, whenever it appeared, by the word citizen or individual, thereby making the report a report on the rights of members of society in general based on a kind of social criticism. Mr. Mazilu also deplored the situation of young people deprived inter alia of their right to education, employment or culture, but he did not mention that States needed to have resources at their command that would allow them to offer young people the possibility of exercising those rights. The issue of resources was fundamental and it was impossible to compare advanced countries with developing countries. In some countries, young people were deprived of those rights in the same way as the rest of society; accordingly, they were not, strictly speaking, subjected to discrimination. Their situation, like the situation of other citizens, was due to the economic problems of the countries in question. Mr. Mazilu's report, therefore, shed no new light on issues related to young people, which came within the competence of specialized agencies. However, he deserved thanks, even though his report left something to be desired, for the efforts he had made to discharge the task assigned to him.

8. That having been said, it was important to stress that nowadays young people occupied a more important place in society and had more responsibilities than in the past. That was due to the fact that the concept of authority within the community had become much weaker or had even sometimes disappeared, so that young people now played a very active role. They were more aware of certain social problems and tended to act more quickly to demand change. One might say that when society was suffering from flu they were the first to cough; they were therefore a kind of alarm bell that alerted society to the existence of a problem.

9. Sometimes young people were also associated with the phenomenon of fundamentalism. One must, however, beware of confusing fundamentalism, which was a return to the sources to determine the origins of problems in order to resolve them, and extremism which had erupted throughout history. Extremism had even played its part in the evolution of societies, by bringing them to understand that a change had been necessary. However, extremism, in whatever sense it was understood, was inherently dangerous and one should therefore be vigilant. Since the 1960s, young people had been trying to shake off conservatism and old traditions and their revolt against society had finally borne its fruits. The same could be said of all succeeding generations. In the Islamic countries at the present time there were extremist movements that favoured the introduction of greater strictness in social relations. It should be borne in mind that today's young extremists were reacting to certain social problems. It was also obvious that they were often under the influence of leaders who used religion as a pretext in order to achieve other objects with the moral and financial aid of external secret forces that sought to destabilize other countries from within.

10. The CHAIRMAN announced that Mr. Mazilu, the author of the report on human rights and youth (E/CN.4/Sub.2/1991/42), would very probably introduce his report to the Sub-Commission on the following morning.

11. Mr. YIMER, speaking on a point of order, inquired why Mr. Mazilu would introduce the report on the following day since the Sub-Commission was considering it during the current meeting.

12. The CHAIRMAN explained that he had intended to suggest to the members speaking on item 17 to refrain from discussing Mr. Mazilu's report in their statements, since item 17 also focused on issues other than youth.

13. Mrs. ATTAH, supported by Mr. GUISSE, protested against the changes made to the timetable for the consideration of agenda items compared with preceding years; that practice disorganized the long-standing plans of certain delegations and non-governmental organizations. She proposed, as planned, to speak about Mr. Mazilu's report and requested to have the opportunity to do so.

14. Mr. KHALIFA requested that the summary record of the meeting should reflect the fact that he had spoken on Mr. Mazilu's report before the Sub-Commission had been informed that Mr. Mazilu would be attending the following morning's meeting. He had thought that Mr. Mazilu would have been unable to come to Geneva.

15. Following a procedural discussion in which the CHAIRMAN, Mrs. WARZAZI, Mrs. KSENTINI, Mr. SACHAR, Mrs. ATTAH, Mr. CHERNICHENKO and Mr. YIMER took part on whether the Sub-Commission should postpone its consideration of Mr. Mazilu's report or item 17 as a whole until the following day and, in that case, move on immediately to item 16 or whether it was better to continue consideration of item 17 as a whole, the CHAIRMAN said that it was his understanding that the Sub-Commission was in agreement to continue consideration of item 17 as a whole and he urged speakers not to comment on Mr. Mazilu's report at that stage.

16. It was so decided.

17. Mr. BOUTKEBITCH referred to the legal problems which the implementation of the international human rights instruments posed for the States that had ratified them. Opinions differed on the way of incorporating such instruments into the internal legal order. Did the International Covenants on Human Rights have force of law upon being ratified or did a law have to be promulgated in order to give them effect? If the Covenants were to be effectively implemented, one must know precisely what their rank was in the hierarchy of norms and what their authority was in relation to the laws and notably the constitution. Could the United Nations, which had acquired a good deal of experience in that field, not make recommendations to States on how to resolve any conflicts between international law and domestic law? It would also be worth while to undertake a special study on that question reporting, inter alia, on State practice in cases where international law took precedence over domestic law.

18. Mr. DESPOUY said that the question raised by Mr. Boutkevitch was of capital importance and that it was precisely in those countries where the primacy of international law was not recognized that the implementation of international instruments raised most problems. It was extremely fortunate that most modern constitutions now established that primacy. In the event of incompatibility between an international instrument which it had ratified and its domestic legislation, the State party must bring the latter into line with the former. By supervising the implementation of human rights instruments, regional monitoring bodies such as the European Court of Human Rights or the Inter-American Court of Human Rights furthered that process.

19. Mr. CHERNICHENKO said that he would like the Sub-Commission to study the areas in which there were no generally accepted human rights standards, mainly because of the very rapid advances in science; for example, that was the case with medicine and genetics, two areas on which international law was completely silent. Urgent consideration must therefore be given to the preparation of standards in those areas. The Sub-Commission should also consider the question of setting up international machinery to react to emergency situations as the time had come to move from words to deeds. He was thinking of preparing a draft on the subject which he would hand to the Secretariat.

20. Mr. EIDE supported Mr. Boutkevitch's proposal for carrying out a study on the incorporation of standards of international law into domestic law. He recalled, in that connection, that the treaty bodies addressed that issue in depth when they considered the way in which States parties discharged their obligations. It would therefore be very useful to draw on their experience in undertaking such a report. The Sub-Commission should also give some thought to ways of making those persons who were currently committing atrocities in Europe and in other parts of the world aware that they would have to answer for their acts.

21. Mrs. KSENTINI agreed with Mr. Boutkevitch that the question of the relationship between international instruments and domestic legislation deserved in-depth consideration. Two fundamental problems arose in that respect. First of all, there was the problem of the hierarchy of norms as between international conventions and domestic legislation. She referred in that connection to the situation in Algeria, a country whose Constitution provided that international treaties, once ratified, took precedence over domestic law. An individual could even invoke treaties that had been ratified before the courts. The second problem is that of the reservations made by States to international instruments; for many Governments, those reservations were an easy way out whose ultimate result was to create incompatibility between the instrument in question and the reservation entered.

22. While she approved of Mr. Boutkevitch's idea of making a special study, she thought it might be better, initially, to undertake a compilation of State practice in that field which would also include the practice of regional and international bodies working in the field of human rights. She also recalled that a seminar had been held the previous year in Paris on national institutions for the promotion and protection of human rights. She would like the Secretariat to give some information about that seminar and the conclusions it had reached.

23. Mrs. WARZAZI endorsed Mrs. Ksentini's idea of making a compilation of State practice in respect of the incorporation of international conventions into domestic law.

24. She recalled that, two years earlier, when the question had been raised of including the issue of discrimination against women on the Sub-Commission's agenda, she had not shown much enthusiasm, taking the view that work which would thus be assigned to the Sub-Commission would duplicate the task given a very long time ago to the Commission on the Status of Women. It had had to be acknowledged, as the United Nations had itself acknowledged, that the progress made in that field had been very limited. She considered that the valuable contribution made by women in all spheres and which had gone unnoticed for so long had begun to be apparent with the years and through the studies which revealed the extent of the gulf that lay between them and men and the enormous injustices which they continued to endure. Societies had always justified the harshness of the status assigned to women on the grounds of tradition, religion or culture, whereas the exploitation of women could be explained primarily by economic reasons. Indeed, in reactionary circles, educated women were perceived by men as such a threat at that level that policies of exclusion vis-à-vis women were once again being formulated. She was concerned about that phenomenon to which she wished to draw the attention of the international community; the latter should adopt a new strategy in order to abolish that discrimination. She also wondered whether Governments were serious about eliminating its causes. Referring to one of the recent publications of the United Nations Department of Public Information entitled The Crusade for Women's Rights which dealt with the question of the "peaceful revolution" conducted by the Commission on the Status of Women in order to bring about equality between the sexes, she noted that such a peaceful approach had not, after 50 years of activity, made it possible to resolve the problems of women.

25. She considered that in the United Nations the practice of considering the question of women as a social problem should be ended once and for all and believed that the Sub-Commission could intervene at that level. She wanted to see an end to any paternalistic attitude, considering that women aspired to something quite different from protection; the rights they claimed, they claimed as human beings, independently of their sex. The struggle should therefore be waged at the level of human rights in general. Consequently, Governments should report to the United Nations in that connection and the procedure established by Economic and Social Council resolution 1503 (XLVIII) could induce them to take action.

26. Further, it would be all to the good to encourage all the specialized agencies, including UNDP, UNICEF and the financial institutions which, in the context of economic assistance, required a proportion of their credits to be earmarked for development projects of particular concern to women and concerning which women should be consulted. She appealed to the international NGOs to extend their assistance to national NGOs which were striving to resolve their problems but had insufficient resources.

27. She thought that the parties principally concerned, i.e., those women who, more fortunate than their sisters, had the possibility of acting, should abandon feminist activism, since the war of the sexes was not realistic, in

favour of gaining admittance in political life. She referred to a symposium organized in November 1989 by the Interparliamentary Union on the participation of women in the decision-making process in political and parliamentary life, pointing out that while the female population accounted for more than half of the world's population, the proportion of women members of parliament was less than 13 per cent throughout the world. She considered that since women formed the majority of the electorate they had a major advantage which they should exploit in order to ensure that the political parties set quotas for women in parliament and supported women candidates for decision-making posts and political posts. She believed that Governments ought to implement the obligations they had undertaken under international conventions; consequently, the expert groups which monitored compliance with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights should include in their guidelines a request for information on the measures adopted by Governments to guarantee women equality and dignity. The Sub-Commission must do its utmost to ensure that men and women entered the twenty-first century in harmony and mutual respect.

28. Mr. TIAN Jin endorsed Mrs. Warzazi's remarks. He pointed out that, during the previous session in Vienna of the Commission on the Status of Women, it had been decided that the next World Conference on Women would be held in China in 1995. It would be a large-scale meeting which would make it possible to demonstrate the extent of the role played by women in development and peace and in the development of their own rights. He announced that the People's Congress of China had promulgated a law on the protection of women, with 9 chapters and 54 articles encompassing, inter alia questions of political rights, education, marriage, property and the legal obligations incumbent on the State. The law was a significant step in the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

29. Mr. SACHAR raised the question of the lot of women in the developing countries, expressing the view that in those countries where there was a high level of female literacy, there was no real discrimination against women. Taking the case of India, he gave the example of a law under which air hostesses had been compelled to stop work when they married. That law, which was deemed to be incompatible with the Constitution, had been repealed. He also mentioned a law whereby, in certain local bodies, women were required to be co-opted if they had not been elected in sufficient numbers. It was precisely in those local bodies that the important decisions were taken. He considered that literacy constituted a special problem area to which every effort should be devoted.

30. Mr. GUISSE reverted to the question of the compilation of State practices in respect of the incorporation of international conventions into domestic law. He would like such a compilation to go still further; States should be asked whether, in the context of their internal jurisprudence, the decisions taken by various courts were based on an acknowledged international standard and whether verdicts were pronounced specifically on the basis of standards derived from international instruments.

31. Mr. ENNACEUR (Observer for Tunisia), speaking in exercise of the right of reply, in connection with the statement by the International Federation of Human Rights under agenda item 17, stated that the Law on Associations, mentioned on the previous day by the Federation, which dated from 1959, had been amended on two occasions. The first occasion had been in August 1988, to abolish the system of prior authorization for associations, replacing it by a simple declaration. The second occasion had been in April 1992, to guarantee the independence of associations and to protect them from partisan political quarrels. Those amendments had certainly not sought to interfere with the running of associations but rather to strengthen the substance of associations, thus consolidating the democratic process. With regard to the Tunisian League of Human Rights, he wished to specify that its dissolution had not been the outcome of a decision by the Government but had been brought about by the refusal of certain of its leaders to comply with the provisions of the law. He drew attention to the extent of the associative movement in Tunisia, where there were nearly 6,000 associations active in many fields. He further specified that the associative movement was in line with Tunisia's commitment to democracy and attested to the will of the Tunisian Government to strengthen civil society, the fundamental freedoms and the State subject to the rule of law.

The meeting rose at 12.55 p.m.